

*S/46m/11/15*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, LALIT CLARKSON, DEON DENNIS,  
and DAVID OURLICHT, individually and on behalf of a  
class of all others similarly situated;

Plaintiffs,

-against-

THE CITY OF NEW YORK; NEW YORK CITY POLICE  
COMMISSIONER RAYMOND KELLY, in his individual  
and official capacity; MAYOR MICHAEL  
BLOOMBERG, in his individual and official capacity;  
NEW YORK CITY POLICE OFFICER RODRIGUEZ, in  
his individual capacity; NEW YORK CITY POLICE  
OFFICER GOODMAN, in his individual capacity; NEW  
YORK CITY POLICE OFFICER JANE DOE, in her  
individual capacity; NEW YORK CITY POLICE  
OFFICER ERIC HERNANDEZ, Shield # 15957, in his  
individual capacity; NEW YORK CITY POLICE  
OFFICER CORMAC JOYCE, Shield # 31274, in his  
individual capacity; NEW YORK CITY POLICE  
SERGEANT JAMES KELLY, Shield # 92145, in his  
individual capacity; NEW YORK CITY POLICE  
OFFICER LUIS PICHARDO, Shield # 00794, in his  
individual capacity; NEW YORK CITY POLICE  
OFFICER ANGELICA SALMERON, Shield # 7116, in  
her individual capacity; NEW YORK CITY POLICE  
OFFICER MICHAEL COUSIN HAYES, Shield # 3487, in  
his individual capacity; NEW YORK CITY POLICE  
OFFICER CHRISTOPHER MORAN, in his individual  
capacity; and NEW YORK CITY POLICE OFFICERS  
JOHN DOES # 1 through #11, in their individual  
capacities;

Defendants.

**STIPULATION AND  
PROTECTIVE ORDER  
RELATED TO THE PHOTO  
ARRAYS SHOWN TO  
PLAINTIFFS**

08 Civ. 01034 (SAS)

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>11/19/09</u>
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WHEREAS, plaintiffs have requested that defendants produce (1) color copies of the photographs of police officers that were marked as Exhibits and shown to plaintiffs Lalit Clarkson and David Ourlicht on August 24, 2009 with line-up identification numbers; and (2) color copies of all photographs of police officers that are shown to plaintiff David Floyd involving the incident that allegedly occurred on April 20, 2007;

WHEREAS, defendants object to the production of the discovery unless appropriate protection for its confidentiality is assured, and;

WHEREAS, the Court ordered defendants to produce (1) color copies of the photographs of police officers that were marked as Exhibits and shown to plaintiffs Lalit Clarkson and David Ourlicht on August 24, 2009 with line-up identification numbers; and (2) color copies of all photographs of police officers that are shown to plaintiff David Floyd involving the incident that allegedly occurred on April 20, 2007, subject to an appropriate Stipulation and Protective Order, and;

WHEREAS, plaintiffs have also requested (1) a correlating list of the names and fictionalized tax identification numbers, consistent with the fictionalized tax identification numbers contained in the stop, question and frisk databases produced to plaintiffs by defendants on November 6, 2009 (cd's Bates Numbered NYC\_2\_00008180 and NYC\_2\_00008181), of each officer depicted in the photographs of police officers that were marked as Exhibits and shown to plaintiffs Lalit Clarkson and David Ourlicht on August 24, 2009; and (2) a correlating list of the names and fictionalized tax identification numbers, consistent with the fictionalized tax identification numbers contained in the stop, question and frisk databases produced to plaintiffs by defendants on November 6, 2009 (cd's Bates Numbered NYC\_2\_00008180 and

NYC\_2\_00008181), of each officer depicted in the photographs of police officers that are shown to plaintiff David Floyd, and

WHEREAS, defendants agreed to produce (1) a correlating list of the names and fictionalized tax identification numbers, consistent with the fictionalized tax identification numbers contained in the stop, question and frisk databases produced to plaintiffs by defendants on November 6, 2009 (cd's Bates Numbered NYC\_2\_00008180 and NYC\_2\_00008181), of each officer depicted in the photographs of police officers that were marked as Exhibits and shown to plaintiffs Lalit Clarkson and David Ourlicht on August 24, 2009; and (2) a correlating list of the names and fictionalized tax identification numbers, consistent with the fictionalized tax identification numbers contained in the stop, question and frisk databases produced to plaintiffs by defendants on November 6, 2009 (cd's Bates Numbered NYC\_2\_00008180 and NYC\_2\_00008181), of each officer depicted in the photographs of police officers that are shown to plaintiff David Floyd, subject to an Attorney's Eyes Only Stipulation and Protective Order that bars plaintiffs' counsel from disseminating any information contained on the correlating list to anyone, including plaintiffs.;

WHEREAS, good cause exists for the entry of this order, and;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the attorneys for plaintiffs and defendants, as follows:

1. As used herein, "Confidential Materials" shall mean (1) color copies of the photographs of police officers that were marked as Exhibits and shown to plaintiffs Lalit Clarkson and David Ourlicht on August 24, 2009 with line-up identification numbers; (2) color copies of all photographs of police officers that are shown to plaintiff David Floyd involving the

incident that allegedly occurred on April 20, 2007; and (3) any documents that the Court directs to be produced as "Confidential Materials" subject to this order.

2. As used herein, "Attorneys' Eyes Only Confidential Materials" shall mean (1) a correlating list of the names and fictionalized tax identification numbers, consistent with the fictionalized tax identification numbers contained in the stop, question and frisk databases produced to plaintiffs by defendants on November 6, 2009 (cd's Bates Numbered NYC\_2\_00008180 and NYC\_2\_00008181), of each officer depicted in the photographs of police officers that were marked as Exhibits and shown to plaintiffs Lalit Clarkson and David Ourlicht on August 24, 2009; (2) a correlating list of the names and fictionalized tax identification numbers, consistent with the fictionalized tax identification numbers contained in the stop, question and frisk databases produced to plaintiffs by defendants on November 6, 2009 (cd's Bates Numbered NYC\_2\_00008180 and NYC\_2\_00008181), of each officer depicted in the photographs of police officers that are shown to plaintiff David Floyd; and (3) any documents that the Court directs to be produced as "Attorneys' Eyes Only Confidential Materials" subject to this order.

3. Plaintiffs shall not use the "Confidential Materials" for any purpose other than for the preparation or presentation of their case in the above-captioned action.

4. Plaintiffs' attorneys shall not use the "Attorneys' Eyes Only Confidential Materials" for any purpose other than for the preparation or presentation of plaintiffs' case in this action.

5. Plaintiffs shall not disclose the "Confidential Materials" to any person not a member of the staff of or a volunteer at plaintiffs' attorneys' offices, except under the following conditions:

- a. Disclosure may be made only if necessary to the preparation or presentation of each party's case in this action.
  - b. Disclosure before trial may be made only to a party; to an expert who has been retained or specially employed by a party's attorneys in anticipation of litigation or preparation for this action; to a witness at deposition; or to the Court.
  - c. Before any disclosure is made to a person listed in subparagraph (b) above (other than to the Court), the party's attorneys shall provide each such person with a copy of this Stipulation and Protective Order, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution or defense of this case and not to further disclose the Confidential Materials except in testimony taken in this case. The signed consent shall be retained by counsel for the party disclosing the information and a copy shall be furnished to the other parties' attorneys upon their request.
6. The "Attorneys' Eyes Only Confidential Materials" and any information contained therein shall not be disclosed to plaintiffs.
7. Plaintiffs' attorneys shall not disclose the "Attorneys' Eyes Only Confidential Materials" to any person not a member of the staff of or a volunteer at their law office.
8. Deposition testimony concerning any "Confidential Materials" and "Attorneys' Eyes Only Confidential Materials" that reveals the contents of the "Confidential" photographs and/or the names of any individuals contained in the photographs shall be deemed confidential by all parties subject to the terms of this Stipulation and Confidentiality Order, and



the transcript of such testimony, together with any exhibits referred to therein, shall be separately bound, with a cover page prominently marked "CONFIDENTIAL" and /or "ATTORNEYS' EYES ONLY CONFIDENTIAL." Such portion of the transcript shall be deemed to be Confidential materials within the meaning of this Stipulation and Protective Order.

9. If any paper which incorporates any "Confidential Materials" or "Attorneys Eyes Only Confidential Materials" or reveals the contents thereof is filed in this Court, those portions of the papers shall be delivered to the Court enclosed in a sealed envelope bearing the caption of this action, an indication of the nature of the contents, and the following legend:

**CONFIDENTIAL**

This envelope contains documents or information designated confidential pursuant to an order entered by the United States District Court for the Southern District of New York in the above-captioned action. This envelope shall not be opened or unsealed without the express direction of a judge of this Court, and its contents shall not be displayed or revealed except as the Court may order. This envelope and its contents shall at all times be maintained separate and apart from the publicly available files of this case.

10. Within 30 days after the termination of this case, including any appeals, the "Confidential Materials" and "Attorneys Eyes Only Confidential Materials," including all copies thereof, shall be returned to the attorneys for defendants or, upon their consent, destroyed, and all persons who possessed such materials shall verify their return or destruction by affidavit furnished to the attorneys who provided them with the materials. This Order shall continue to be binding after the conclusion of this litigation.

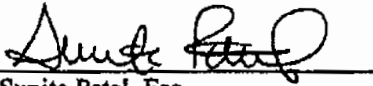
11. The parties may seek modification of this Stipulation and Protective Order by application to the Court for good cause shown at anytime during the course of this litigation.


12. Nothing in this Stipulation and Protective Order shall be construed to limit defendants' use of confidential materials in any manner.

Dated: New York, New York  
November 19, 2009

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By:   
Sunita Patel, Esq.

By:   
David M. Hazan, Esq.  
Assistant Corporation Counsel  
Special Federal Litigation Division

SO ORDERED:

  
SHIRA A. SCHEINDLIN  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

The undersigned hereby acknowledges that he/she has read the Stipulation and Protective Order, dated \_\_\_\_\_ entered in the United States District Court for the Southern District of New York in the action entitled David Floyd, et al. v. City of New York, et al., 08 Civ. 1034 (SAS), and understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than in connection with the prosecution of this case, and will not further disclose the Confidential Materials except in testimony taken in this case.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation